



Governmental Operations Committee

**Wednesday, January 11, 2006
1:30 – 3:15 PM
Morris Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Governmental Operations Committee

Start Date and Time: Wednesday, January 11, 2006 01:30 pm

End Date and Time: Wednesday, January 11, 2006 03:15 pm

Location: Morris Hall (17 HOB)

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 67 Automated External Defibrillator Devices by Sobel
HB 189 Building Designations by Williams

Consideration of the following proposed committee bill(s):

PCB GO 06-01 -- OGSR Child Support Services
PCB GO 06-02 -- OGSR Local Government Managers
PCB GO 06-03 -- OGSR Code Enforcement Officers
PCB GO 06-04 -- OGSR Medical and Health Information
PCB GO 06-06 -- OGSR Copyright of Data Processing Software
PCB GO 06-07 -- OGSR Communications Services Tax Simplification Law
PCB GO 06-08 -- OGSR Archaeological Sites
PCB GO 06-09 -- OGSR Economic Development Agencies

NOTICE FINALIZED on 12/30/2005 14:21 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 67 Automated External Defibrillator Devices
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:** SB 252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care General Committee</u>	<u>9 Y, 0 N</u>	<u>Ciccone</u>	<u>Brown-Barrios</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Brazzell</u> <i>shz</i>	<u>Williamson</u> <i>Law</i>
3) <u>Health Care Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Health & Families Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 67 permits the granting of funds from the Emergency Medical Services Trust Fund through the Emergency Medical Services Grant Program to certain youth athletic organizations to expand the use of automatic external defibrillators in the community.

HB 67 also requires the Department of Health to implement an educational campaign to inform persons who acquire an automated external defibrillator device about liability immunity provided under current law.

Depending on the media used for the educational campaign, a minimal fiscal impact may be incurred by the Department of Health to implement the educational campaign required in the bill.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government – HB 67 expands the permissible uses for funds allocated to counties from the Emergency Medical Services Trust Fund.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 401.104, F.S., establishes the legislative intent that

[E]mergency medical services are essential to the health and well-being of all citizens and that private and public expenditures for adequate emergency medical services represent a constructive and essential investment in the future of the state and our democratic society. A major impediment to the provision of adequate and economic emergency medical services to all citizens is the inability of governmental and private agencies within a service area to respond cooperatively to finance the systematic provision of such services.

The Emergency Medical Services Grant Program was established to address this impediment.

The Department of Health (DOH) is authorized to dispense grant monies from the Emergency Medical Services Trust Fund according to the distribution formulas provided in s. 401.113(a) and (b), F.S., as follows:

- Forty-five percent of the monies collected by the DOH must be divided among the counties according to the proportion of the combined amount deposited in the trust fund from the county. An individual board of county commissioners may distribute these funds to emergency medical service organizations within the county, as it deems appropriate [s. 401.113(a)].
- Forty percent of the monies collected by DOH are for making matching grants to local agencies, municipalities, and emergency medical services organizations for the purpose of conducting research, increasing existing levels of emergency medical services evaluation, community education, injury prevention programs, and training in cardiopulmonary resuscitation and other lifesaving and first aid techniques [s. 401.113(b)]. These funds are awarded based on a formal review process involving local emergency medical services personnel from across the state.

During FY 2004-05, 66 of the 67 counties applied to receive county grant funds totaling \$5.2 million under s. 401.113(a), F.S., including \$236,314 carried over from the previous fiscal year. During FY 2004-05, a total of 151 applications for matching grants were received, with 63 being funded; the funds awarded totaled \$4.42 million.

According to a number of articles in *The Physician and Sportsmedicine*, there is increased interest to provide access to automatic external defibrillators at national local sporting events. Specifically, an article written by Dr. Aaron Rubin, *The Physician and Sportsmedicine*, Vol 28 No.3, March 2000, reads:

Although sudden cardiac death is rare in sports, having an automated external defibrillator (AED) available facilitates early defibrillation and increases the chance of survival for an athlete in cardiac arrest. In sudden cardiac arrest, the most frequent initial rhythm is ventricular fibrillation (VF). The only effective treatment for VF is electrical defibrillation and the probability of success declines rapidly over time. Chances of resuscitation decrease 7 percent to 10 percent each minute.

Earlier articles in the same publication: Automatic External Defibrillators in the Sports Arena: The Right Place, The Right Time, Vol, 26 No 12, December 1998, support the benefits of having an AED accessible to athletes during sporting events. "In large sports settings, AEDs can supplement standby EMS services. At sports events in small towns or venues, the AED may be the only means available to effect early defibrillation."

Proposed Changes

The bill expands the list of eligible participants in the Emergency Medical Services Grant Program to include youth athletic organizations who work in conjunction with local emergency medical services organizations. The bill permits youth athletic organizations to apply for grants for the purpose of expanding the use of automatic external defibrillators in the community.

The bill directs the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device that his or her immunity from liability under s. 768.1325, F. S., for harm resulting from the use or attempted use of the device, does not apply if he or she fails to properly maintain and test the device or provide appropriate training in the use of the device.

C. SECTION DIRECTORY:

Section 1 adds s. 401.107(6) and (7), F.S., providing definitions of "youth athletic organization" and "automatic external defibrillator".

Section 2 amends s. 401.111, F.S., to include youth athletic organizations as eligible participants in the emergency medical services grant program.

Section 3 amends s. 401.113(a) and (b), F.S., to include youth athletic organizations as eligible participants in the emergency medical services grant program.

Section 4 creates an unnumbered section of law requiring the Department of Health to implement an educational campaign regarding liability immunity during use of automated external defibrillator devices.

Section 5 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The Department of Health has not determined costs to implement the educational campaign outlined in the bill. A minimal cost would be incurred if the department were to use the state's website to provide the information regarding equipment maintenance, testing and user training.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill amends the Emergency Medical Services Grant Program, under which some local governments receive funding. The bill expands the potential number of participants but does not expand the funding available. Greater competition may lead to some local governments not being awarded funds which they might have otherwise received if competition had been less.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the potential number of participants but does not expand the funding available. Thus some youth athletic organizations may receive grant funds to purchase automatic external defibrillators; it is undetermined how many such organizations would receive grant monies. However, greater competition may lead to some private emergency medical services organizations not being awarded funds which they might have otherwise received if competition had been less. The number of such organizations is indeterminate.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rulemaking authority to implement the requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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1 A bill to be entitled
2 An act relating to automated external defibrillator
3 devices; amending s. 401.107, F.S.; defining the terms
4 "youth athletic organization" and "automated external
5 defibrillator device"; amending s. 401.111, F.S.;
6 providing for grants to youth athletic organizations for
7 automated external defibrillator devices; amending s.
8 401.113, F.S.; providing for disbursement of funds from
9 the Emergency Medical Services Trust Fund; requiring the
10 Department of Health to implement an educational campaign
11 to inform the public about the lack of immunity from
12 liability regarding the use of automated external
13 defibrillator devices under certain conditions; providing
14 an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (6) and (7) are added to section
19 401.107, Florida Statutes, to read:

20 401.107 Definitions.--As used in this part, the term:

21 (6) "Youth athletic organization" means a private not-for-
22 profit organization that promotes and provides organized
23 athletic activities to youth.

24 (7) "Automated external defibrillator device" means a
25 device as defined in s. 768.1325(2)(b).

26 Section 2. Section 401.111, Florida Statutes, is amended
27 to read:

28 401.111 Emergency medical services grant program;

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29 authority.--The department is hereby authorized to make grants
30 to local agencies, ~~and~~ emergency medical services organizations,
31 and youth athletic organizations in accordance with any
32 agreement entered into pursuant to this part. These grants shall
33 be designed to assist local ~~said~~ agencies and emergency medical
34 services organizations in providing emergency medical services,
35 including emergency medical dispatch, and to assist youth
36 athletic organizations that work in conjunction with local
37 emergency medical services organizations to expand the use of
38 automated external defibrillator devices in the community. The
39 cost of administering this program shall be paid by the
40 department from funds appropriated to it.

41 Section 3. Paragraphs (a) and (b) of subsection (2) of
42 section 401.113, Florida Statutes, are amended to read:

43 401.113 Department; powers and duties.--

44 (2) The department shall annually dispense funds contained
45 in the Emergency Medical Services Trust Fund as follows:

46 (a) Forty-five percent of such moneys must be divided
47 among the counties according to the proportion of the combined
48 amount deposited in the trust fund from the county. These funds
49 may not be used to match grant funds as identified in paragraph
50 (b). An individual board of county commissioners may distribute
51 these funds to emergency medical services ~~service~~ organizations
52 and youth athletic organizations within the county, as it deems
53 appropriate.

54 (b) Forty percent of such moneys must be used by the
55 department for making matching grants to local agencies,
56 municipalities, ~~and~~ emergency medical services organizations,

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57 and youth athletic organizations for the purpose of conducting
58 research, increasing existing levels of emergency medical
59 services, evaluation, community education, injury-prevention
60 programs, and training in cardiopulmonary resuscitation and
61 other lifesaving and first aid techniques.

62 1. At least 90 percent of these moneys must be made
63 available on a cash matching basis. A grant made under this
64 subparagraph must be contingent upon the recipient providing a
65 cash sum equal to 25 percent of the total department-approved
66 grant amount.

67 2. No more than 10 percent of these moneys must be made
68 available to rural emergency medical services, and
69 notwithstanding the restrictions specified in subsection (1),
70 these moneys may be used for improvement, expansion, or
71 continuation of services provided. A grant made under this
72 subparagraph must be contingent upon the recipient providing a
73 cash sum equal to no more than 10 percent of the total
74 department-approved grant amount.

75
76 The department shall develop procedures and standards for grant
77 disbursement under this paragraph based on the need for
78 emergency medical services, the requirements of the population
79 to be served, and the objectives of the state emergency medical
80 services plan.

81 Section 4. The Department of Health shall implement an
82 educational campaign to inform any person who acquires an
83 automated external defibrillator device that his or her immunity
84 from liability under s. 768.1325, Florida Statutes, for harm

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85 resulting from the use or attempted use of the device, does not
86 apply if he or she fails to:

87 (1) Properly maintain and test the device; or

88 (2) Provide appropriate training in the use of the device
89 to his or her employee or agent when the employee or agent was
90 the person who used the device on the victim, except as provided
91 in s. 768.1325, Florida Statutes.

92 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 Building Designations

SPONSOR(S): Williams and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	_____	Brazzell <i>KB</i>	Williamson <i>haw</i>
2) <u>Environmental Regulation Committee</u>	_____	_____	_____
3) <u>State Administration Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill names the Department of Environmental Protection building at 2600 Blair Stone Road, Tallahassee, as the "Bob Martinez Building".

This bill does not appear to have a fiscal impact on local governments and has an insignificant fiscal impact on state government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Section 267.062, F.S., does not permit naming a state building for a living person unless specifically provided by law.

This bill names the Department of Environmental Protection building at 2600 Blair Stone Road, Tallahassee, as the "Bob Martinez Building" and directs the department to erect suitable markers. Two separate buildings share the address of 2600 Blair Stone Road. One is known as the "Twin Towers Building"; the other is the Department of Environmental Protection Lab Complex.

Robert "Bob" Martinez served as Florida's 40th Governor from 1987-1991, the state's first American Governor of Hispanic descent. Martinez was also the second Republican governor since Reconstruction. He was born and raised in Tampa, later attending the University of Tampa. He served as mayor of Tampa for seven years. As Governor, he championed the Surface Water Improvement and Management Act (also known as the SWIM program), which established uniform policies for managing and protecting Florida's surface waters. He also supported an innovative solid waste disposal program.¹

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law naming the Department of Environmental Protection building as the "Bob Martinez Building" and directs the department to erect suitable markers.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

Funding for suitable markers is required. The Department of Management Services estimates the cost at approximately \$30,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

¹ Allen Morris and Joan Perry Morris, The Florida Handbook (Tallahassee: Peninsula Publishing Co., 2005) 325-326.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Two separate buildings used by the Department of Environmental Protection (DEP) share the address of 2600 Blair Stone Road. One is known as the "Twin Towers Building"; the other is the Department of Environmental Protection Lab Complex. However, the bill refers to naming "the building". The intent of the bill would be clearer if it specified which building at that address would be named the "Bob Martinez Building".

The Department of Management Services (DMS) manages the DEP's state-owned buildings. Thus according to DEP, it would be more appropriate for DMS rather than DEP to be assigned the responsibility for erecting suitable markers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

HB 189

2006

1 A bill to be entitled
2 An act relating to building designations; designating the
3 Department of Environmental Protection building at 2600
4 Blair Stone Road in Tallahassee as the "Bob Martinez
5 Building"; directing the Department of Environmental
6 Protection to erect suitable markers; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Bob Martinez Building designated; Department of
12 Environmental Protection to erect suitable markers.--

13 (1) The building at 2600 Blair Stone Road in Tallahassee,
14 which houses the office of the Department of Environmental
15 Protection, is designated as the "Bob Martinez Building."

16 (2) The Department of Environmental Protection is directed
17 to erect suitable markers designating the Bob Martinez Building
18 as described in subsection (1).

19 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-01 OGSR Child Support Services
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell <i>HB</i>	Williamson <i>Paw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts, with editorial changes, the public records exemption for personal identifying information held by a non-Title IV-D county child support agency. The exemption will repeal on October 2, 2006, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on local governments. This bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 61.13(1)(a), F.S., provides that the court may order either or both parents who owe a duty of support to a child to pay support, based on guidelines provided in law. The State of Florida, through the Department of Revenue (DOR) and through the Dade County State Attorney's Office (for cases in Miami-Dade County) and the Manatee County Clerk of Court (for cases in Manatee County) under contract with the DOR, offers child support enforcement services to certain individuals who receive or believe they are entitled to receive child support. These are "Title IV-D" services provided in accordance with Title IV-D of the Social Security Act. Such services provided by the DOR and its contractors include:

- Establishment of paternity;
- Establishment of a support order;
- Modification of support orders;
- Collection of child support; and
- Enforcement of support orders.

Parents applying for or receiving public assistance must use Title IV-D child support enforcement services. Custodial parents of children who are not receiving public assistance may choose to avail themselves of the DOR's child support enforcement services. Section 409.2579, F.S., makes confidential and exempt certain information that identifies individuals using DOR's child support enforcement services; this is required under federal law.

For other parents who are not required to use Title IV-D services but wish to receive similar services and who meet other requirements,¹ Broward County offers a more limited array of child support enforcement services, known as "non-Title IV-D" services.² In particular, Broward County collects child support and enforces support orders. Section 61.1827, F.S., provides a public records exemption for certain information that identifies individuals using non-Title IV-D county child support enforcement services, making such information confidential and exempt.

Information that is confidential and exempt includes "any information that reveals the identity of applicants for or recipients of child support services, including the name, address, and telephone number of such persons, in the possession of a non-Title IV-D county child support enforcement agency . . ." The statute permits disclosure of this information under limited circumstances, such as during investigations, prosecutions, or criminal or civil proceedings connected with the administration of the non-Title IV-D county child support enforcement program and when required by certain state or federal laws. However, the non-Title IV-D county child support enforcement agency cannot disclose the name, address, or whereabouts of an applicant, recipient, or child to a person against whom a

¹ According to Broward County Support Unit staff, a support order must already have been entered, both parties must live in Florida and at least one of the parties must live in Broward County. Additionally, the party seeking support must not have retained a private attorney to collect the support.

² Counties' Clerks of Court may provide depository services; however, this is not child support enforcement. Records relating to depository services administered by a Clerk of Court are specifically excluded from the definition of "non-Title IV-D county child support enforcement agency".

protective order has been entered if the county agency has reason to believe that the release of information to such person could harm the applicant, recipient, or child.³

Pursuant to the Open Government Sunset Review Act,⁴ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 61.1827, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill eliminates the repeal, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³ Section 61.1827(2), F.S.

⁴ Section 119.15, F.S.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act⁵ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

⁵ Section 119.15, F.S.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding child support services;
4 amending s. 61.1827, F.S.; making editorial changes;
5 deleting the provision that provides for repeal of the
6 exemption under the Open Government Sunset Review Act;
7 providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 61.1827, Florida Statutes, is amended to
12 read:

13 61.1827 Identifying information concerning applicants for
14 and recipients of child support services.--

15 (1) Any information that reveals the identity of applicants
16 for or recipients of child support services, including the name,
17 address, and telephone number of such persons, held by ~~in the~~
18 ~~possession of a~~ non-Title IV-D county child support enforcement
19 agency is confidential and exempt from ~~public disclosure pursuant~~
20 ~~to~~ s. 119.07(1) and s. 24(a) of Art. I of the State Constitution.
21 The use or disclosure of such information by the non-Title IV-D
22 county child support enforcement agency is limited to the
23 purposes directly connected with:

24 (a) Any investigation, prosecution, or criminal or civil
25 proceeding connected with the administration of any non-Title IV-
26 D county child support enforcement program;

27 (b) Mandatory disclosure of identifying and location
28 information as provided in s. 61.13(8) by the non-Title IV-D

BILL

ORIGINAL

YEAR

county child support enforcement agency when providing non-Title IV-D services; ~~or~~

(c) Mandatory disclosure of information as required by ss. 409.2577, 61.181, 61.1825, and 61.1826 and Title IV-D of the Social Security Act; or

(d) Disclosure to an authorized person, as defined in 45 C.F.R. s. 303.15, for purposes of enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination. As used in this paragraph, the term "authorized person" includes a noncustodial parent, unless a court has entered an order under s. 741.30, s. 741.31, or s. 784.046.

(2) The non-Title IV-D county child support enforcement agency shall not disclose information that identifies by name and address an applicant for or recipient of child support services or the whereabouts of such party or child to another person against whom a protective order with respect to the former party or the child has been entered if the county agency has reason to believe that the release of information to such person could result in physical or emotional harm to the party or the child.

(3) As used in this section, "non-Title IV-D county child support enforcement agency" means a department, division, or other agency of a county government which is operated by the county, excluding local depositories pursuant to s. 61.181 operated by the clerk of the court, to provide child support enforcement and depository services to county residents.

~~(4) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand~~

BILL

ORIGINAL

YEAR

57 | ~~repealed on October 2, 2006, unless reviewed and saved from~~
 58 | ~~repeal through reenactment by the Legislature.~~

59 | Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-02 OGSR Local Government Managers
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption for certain identification and location information regarding an employee relations director, assistant director, manager, or assistant manager of a local government agency or water management district. It also reenacts and narrows the public records exemption for certain identification and location information regarding the spouse or child of that manager. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring fiscal impact on local governments. The bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records Exemption for Certain Local Government Managers

Current law provides a public records exemption for certain identification and location information regarding a current or former employee relations director, assistant director, manager, or assistant manager (manager) of a local government agency or water management district.¹ Specifically, the home address, telephone number, social security number, and photograph of the manager are exempt from public disclosure. In addition, a public records exemption exists for the:

- Name, home address, telephone number, social security number, photograph and place of employment of the spouse of the manager; and
- Name, home address, telephone number, social security number, photograph, place of employment, and the name and location of the school or daycare facility attended by the child of the manager.

Further, an agency, other than the employing agency, must maintain the exempt status of the identification and location information upon receipt of a written request by the affected manager or that manager's employer.

Pursuant to the Open Government Sunset Review Act², the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemption

House staff reviewed the public records exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.³ Staff concluded that certain information currently protected by the public records exemption either is protected by a more general public records exemption or is not maintained by the employing agency. A narrower public records exemption protects the release of social security numbers.⁴ The employing agency does not maintain the photograph of the spouse or child of the manager.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It narrows the public records exemption by removing the exemption for the photograph of the spouse or child of a manager. The bill removes the duplicative public records exemption for social security numbers. It also makes editorial changes.

¹ In order to receive the benefit of the exemption, such personnel's duties and responsibilities must include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties. Section 119.071(4)(d)2., F.S.

² Section 119.15, F.S.

³ Staff surveyed and interviewed managers as part of the review process.

⁴ Section 119.071(5)(a), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reenact and narrow the public records exemption for managers.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may create a minimal non-recurring increase in local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment because of training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill narrows the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill removes the public records exemption for the name, home address, telephone number, and place of employment of the child of a current or former employee relations director, assistant director, manager, or assistant manager of a local government agency or water management district. This is a drafting error and requires an amendment.

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding local government managers;
amending s. 119.071, F.S.; narrowing the public records
exemption; removing a duplicative exemption; deleting the
provision that provides for the repeal of the exemption
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subparagraph 2. of paragraph (d) of subsection
(4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.--

(4) AGENCY PERSONNEL INFORMATION.--

(d)2. The home addresses, telephone numbers, ~~social~~
~~security numbers,~~ and photographs of current or former human
resource, labor relations, or employee relations directors,
assistant directors, managers, or assistant managers of any local
government agency or water management district whose duties
include hiring and firing employees, labor contract negotiation,
administration, or other personnel-related duties; the names,
home addresses, telephone numbers, ~~social security numbers,~~
~~photographs,~~ and places of employment of the spouses ~~and children~~
of such personnel; and the names and locations of schools and day
care facilities attended by the children of such personnel are
exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution. ~~This subparagraph is subject to the Open Government~~

BILL

ORIGINAL

YEAR

30 | ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 31 | ~~repealed on October 2, 2006, unless reviewed and saved from~~
 32 | ~~repeal through reenactment by the Legislature.~~
 33 | Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-03 OGSR Code Enforcement Officers
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts and narrows the public records exemption for certain identification and location information regarding a code enforcement officer and that officer's spouse or child. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring fiscal impact on local governments. The bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records Exemption for Code Enforcement Officers

Code enforcement officers (officers) are responsible for the administration of a wide range of health, safety, and environmental regulations. Current law provides a public records exemption for certain identification and location information regarding a current or former officer.¹ Specifically, the home address, telephone number, social security number, and photograph of the officer are exempt from public disclosure. In addition, a public records exemption exists for the:

- Name, home address, telephone number, social security number, photograph and place of employment of the spouse of the officer; and
- Name, home address, telephone number, social security number, photograph, place of employment, and the name and location of the school or daycare facility attended by the child of the officer.

Further, an agency, other than the employing agency, must maintain the exempt status of the identification and location information upon receipt of a written request by the officer or that officer's employer.

Pursuant to the Open Government Sunset Review Act², the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemption

House staff reviewed the public records exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.³ Staff concluded that certain information currently protected by the public records exemption either is protected by a more general public records exemption or is not maintained by the employing agency. A narrower public records exemption protects the release of social security numbers.⁴ The employing agency does not maintain the photograph of the spouse or child of the officer.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It narrows the public records exemption by removing the exemption for the photograph of the spouse or child of an officer. The bill removes the duplicative public records exemption for social security numbers. It also makes editorial changes.

¹ Section 119.071(4)(d)5., F.S.

² Section 119.15, F.S.

³ Staff surveyed and interviewed officers as part of the review process.

⁴ Section 119.071(5)(a), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reenact and narrow the public records exemption for officers.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may create a minimal non-recurring increase in local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment because of training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill narrows the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding code enforcement officers;
4 amending s. 119.071, F.S.; narrowing the public records
5 exemption; removing a duplicative exemption; deleting the
6 provision that provides for the repeal of the exemption
7 under the Open Government Sunset Review Act; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subparagraph 5. of paragraph (d) of subsection
13 (4) of section 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
15 public records.--

16 (4) AGENCY PERSONNEL INFORMATION.--

17 (d)5. The home addresses, telephone numbers, ~~social~~
18 ~~security numbers,~~ and photographs of current or former code
19 enforcement officers; the names, home addresses, telephone
20 numbers, ~~social security numbers, photographs,~~ and places of
21 employment of the spouses and children of such personnel ~~persons~~;
22 and the names and locations of schools and day care facilities
23 attended by the children of such personnel ~~persons~~ are exempt
24 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
25 ~~This subparagraph is subject to the Open Government Sunset Review~~
26 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
27 ~~October 2, 2006, unless reviewed and saved from repeal through~~
28 ~~reenactment by the Legislature.~~

29 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-04 OGSR Medical and Health Information
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public records exemption for medical information, health information, and financial account numbers held by the Department of Health. The bill reenacts and expands the exemption for medical and health records making it applicable to all agencies. It repeals the public records exemption for financial account numbers because it is duplicative of an exemption found in current law.

This bill provides for retroactive application and for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal non-recurring fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the public records exemption thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Financial Account Numbers

Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).¹ The exemption applies to all agencies.²

Medical and Health Information

Current law provides several agency-specific public records exemptions for medical and health information. For example, the Florida Automobile Joint Underwriting Association has a public records exemption for information relating to the medical condition or medical status of an employee.³ Medical information pertaining to an agency employee is exempt from public records requirements.⁴ The health records of a veteran admitted to residency at the Veterans' Domiciliary Home of Florida are confidential and exempt.⁵ An exemption applicable to all agencies for medical and health information does not exist.

Department of Health

Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.⁶ The information is confidential and exempt⁷ and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

¹ Section 119.071(5)(b), F.S.

² "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.

³ Section 627.311(4), F.S.

⁴ Section 119.071(4)(b), F.S.

⁵ Section 296.09, F.S.

⁶ Section 119.0712(1), F.S.

⁷ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Pursuant to the Open Government Sunset Review Act,⁸ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill reenacts and expands the public records exemption for the Department of Health. The bill expands the exemption to include medical and health information held by *any* agency, thus, creating a general exemption from public records requirements. It provides for retroactive application of the exemption.⁹

The bill removes the exemption for financial account numbers because it is duplicative of the general exemption¹⁰ found in current law.

In addition to the exceptions provided in current law, the bill also authorizes the release of medical records or health records to a governmental entity in the performance of its lawful duties and responsibilities. Current law authorizes the release of medical or health information to a health research entity that has entered into a data-use agreement with the department. The bill continues this exception; however, it reorganizes the requirements that must be included in the data-use agreement.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public records exemption for medical and health information.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

⁸ Section 119.15, F.S.

⁹ In 2001, the Florida Supreme Court ruled that a public records exemption does not apply retroactively unless the legislation clearly provides for retroactive application of the exemption. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹⁰ Section 119.071(5)(b), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding medical and health
4 information; amending s. 119.0721, F.S.; expanding the
5 public records exemption; removing duplicative exemptions;
6 providing for retroactive application; providing for
7 future review and repeal; providing a statement of public
8 necessity; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (1) of section 119.0712, Florida
13 Statutes, is renumbered as paragraph (g) of subsection (5) of
14 section 119.071, Florida Statutes, and is amended to read:

15 119.071 General exemptions from inspection or copying of
16 public records.--

17 (5) OTHER PERSONAL INFORMATION.--

18 (g)1. 119.0712 ~~Executive branch agency-specific exemptions~~
19 ~~from inspection or copying of public records.--~~

20 ~~(1) DEPARTMENT OF HEALTH.--~~ Medical records or health records
21 ~~All personal identifying information; bank account numbers; and~~
22 ~~debit, charge, and credit card numbers contained in records~~
23 ~~relating to an individual's personal health or eligibility for~~
24 ~~health-related services held by an agency before, on, or after~~
25 the effective date of this exemption ~~the Department of Health~~ are
26 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of
27 the State Constitution, except as otherwise provided in this
28 subsection.

BILL

ORIGINAL

YEAR

2. Medical records or health records ~~information made~~
confidential and exempt by this subsection shall be disclosed:

a. ~~(a)~~ With the express written consent of the individual or
the individual's legally authorized representative.

b. ~~(b)~~ In a medical emergency, but only to the extent
necessary to protect the health or life of the individual.

c. ~~(c)~~ By court order upon a showing of good cause.

d. ~~(d)~~ To a governmental entity in the performance of its
lawful duties and responsibilities.

e. To a health research entity performing research of
scientific merit, if the entity enters into a data-use agreement
with the agency. The data-use agreement must provide that the
entity will:

I. Use ~~seeks~~ the records ~~or data~~ pursuant to a research
protocol approved by the agency and a human studies institutional
review board; department,

II. Not permit the identification of persons;

III. Not use the records for any other purpose;

IV. Not conduct intrusive follow-back contacts;

V. Maintain ~~Maintains~~ the records ~~or data~~ in accordance
with the approved protocol;

VI. Acknowledge that the copies of records issued pursuant
to this subparagraph are the property of the agency;

VII. Destroy the records after the research is concluded;

VIII. Notify the agency in writing once the entity has
destroyed the records; and

VII. Pay the copying fees provided for in ~~enters into a~~
~~purchase and data-use agreement with the department, the fee~~
~~provisions of which are consistent with s. 119.07(4).~~

BILL

ORIGINAL

YEAR

The agency may ~~department may~~ deny a request for records if the
~~request or data if the protocol provides for intrusive follow-~~
~~back contacts, has not been approved by a human studies~~
~~institutional review board, does not plan for the destruction of~~
~~confidential records after the research is concluded, is~~
~~administratively burdensome., or does not have scientific merit.~~
~~The agreement must restrict the release of any information that~~
~~would permit the identification of persons, limit the use of~~
~~records or data to the approved research protocol, and prohibit~~
~~any other use of the records or data. Copies of records or data~~
~~issued pursuant to this paragraph remain the property of the~~
~~department.~~

3. This paragraph ~~subsection~~ is subject to the Open
Government Sunset Review Act in accordance with s. 119.15 and
shall stand repealed on October 2, 2011 ~~2006~~, unless reviewed and
saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public
necessity that medical records or health records held by an
agency be made confidential and exempt from public records
requirements, with certain exceptions. Matters of personal health
are traditionally private and confidential concerns between the
patient and the health care provider. The private and
confidential nature of personal health matters pervades both the
public and private health care sectors. For these reasons, the
individual's expectation of and right to privacy in all matters
regarding his or her personal health necessitates this exemption.
The Legislature further finds it is a public necessity to protect
a person's medical records or health records held by an agency

BILL

ORIGINAL

YEAR

87 because the release of such records could be defamatory to the
 88 person or could cause unwarranted damage to the name or
 89 reputation of the person.

90 Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-06 OGSR Copyright of Data Processing Software
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Data processing software is a public record under Florida law. As a result, the general authority permitting agencies to copyright and sell their software based upon market considerations is, in effect, an exemption from public records requirements.

The bill retains the authority for an agency to copyright data processing software and to sell that software based upon market conditions. It also makes editorial changes. This authority will repeal on October 2, 2006, if the bill does not become law.

The bill may have a limited fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Copyright Authority

The Federal Copyright Act of 1976¹ protects “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” To be subject to copyright, a work must be original, an independent creation of the author, and “fixed in any tangible medium,” such as the written word, sound recordings, and visual images. Copyright protection is available only for an expression of an idea and not for the idea itself.²

Works created by an officer or employee of the United States government, as part of his or her duties, are in the public domain and cannot be copyrighted.³ Federal law, however, does not prohibit copyright of works produced by other governmental entities.⁴ As a result, state and local governments may copyright their works depending upon the law of the jurisdiction.⁵ As state governments do not come under the federal prohibition,⁶ Florida law determines whether an agency may obtain a copyright.⁷

In Florida, an agency may not copyright its works without specific statutory authority.⁸ The Legislature has provided general copyright authority for data processing software only.⁹

Data Processing Software

Data processing software¹⁰ is a public record under Florida law. As a result, the general authority permitting agencies¹¹ to copyright and sell their software based upon market considerations is, in effect,

¹ 17 U.S.C. 2. 102(a).

² *Circular 1, Copyright Protection*, U.S. Copyright Office.

³ 17 U.S.C. s. 5.

⁴ *See, Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); *and see, County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).

⁵ The U.S. Copyright Office states in *The Compendium of Copyright Office Practices* that legislative enactments, judicial opinions, and administrative rulings, whether federal or state, are ineligible for federal copyright protection for public policy reasons. Some states have permitted agencies to copyright agency-created software. Examples include California (s. 6254.9 *Cal. Gov. Code*), Alaska (sec. 44.99.400, *Alaska Statutes*), Minnesota (sec. 13.03, *Minnesota Statutes*), Oregon (sec. 291.042, *Oregon Revised Statutes*), and North Dakota (sec. 44-04-18.5, *North Dakota Statutes*).

⁶ *Ibid.* *See also, Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); *and see, County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).

⁷ *Microdecisions, Inc.*, *supra* at 874.

⁸ *See, Microdecisions, Inc. v. Skinner*, 889 So.2d 871 at 875 (2nd DCA 2005), noting that no statute authorizes a county property appraiser to hold a copyright. *See also*, AGO 2003-42, noting no statute generally authorizes counties or county agencies to secure copyrights. *See also*, AGO 2000-13 holding that “a state agency is not authorized to secure or hold a trademark in the absence of specific statutory authority to do so.”

⁹ Section 119.084, F.S.

¹⁰ “Data processing software” means “the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.” Section 119.011(6), F.S.

¹¹ For purposes of granting authority to copyright data processing software, the term “agency” does not include a private agency, person, partnership, corporation, or business entity. Section 119.084(1), F.S.

an exemption from public records requirements.¹² As such, the law enacting this authority contained a statement of public necessity in support of the authority delegated.¹³

An agency has authority to acquire and hold a copyright for data processing software created by the agency, and to enforce its copyright.¹⁴ The agency may sell or license the software to a public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of the software based on market considerations. However, if the software is required by a user solely for access to information maintained or generated by the agency, pricing for the software defaults to the general fee structure for public records¹⁵ because that information is a public record and must be accessible.¹⁶

Pursuant to the Open Government Sunset Review Act,¹⁷ the authority for agencies to copyright data processing software will expire October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review Questionnaire

Agencies that responded to the questionnaire did not indicate a high level of use of the authority to copyright data processing software. Of the 20 state agencies that responded,¹⁸ only the Department of Juvenile Justice¹⁹ and the Florida Department of Law Enforcement (FDLE)²⁰ indicated they had obtained copyrights for agency produced data processing software. Only FDLE stated that it had sold or licensed its copyrighted software.²¹ Of the 11 counties that responded to the questionnaire,²² only one indicated that it had acquired a copyright for data processing software. Sarasota County indicated it had acquired three copyrights. In fiscal year 2005, Sarasota County received \$200,000 for software sales and in fiscal year 2006, it received \$500,000 in sales. None of the 37 cities that responded to the questionnaire indicated that they had acquired a copyright for agency created software. Thus, only four percent of state agency and local government respondents indicated that they had obtained copyrights for data processing software.

No agency indicated that it had received a request from a user for a copy of the copyrighted software for the standard public record fee.

Given the small percentage of respondents who have actually obtained copyrights for agency-created data processing software and the smaller number who have actually sold copyrighted data processing software, and given that the majority of respondents made no recommendation whether to retain the provision, it would appear that this general copyright authority has not been useful to most agencies. Nevertheless, some agencies are making use of the authority to copyright and sell agency-created data

¹² *Microdecisions, Inc.*, supra at 876.

¹³ Chapter 2001-251, Laws of Florida.

¹⁴ Section 119.084(2), F.S.

¹⁵ Section 119.07(4), F.S., provides that if the law prescribes a specific fee, then the custodian must furnish a copy upon payment of that fee. If no fee is prescribed, an agency may not charge more than 15 cents per one-sided copy for a 14"x 8½" page. For all other copies, an agency may charge for the "actual cost of duplication." The "actual cost of duplication" means the cost of material and supplies used to duplicate the record, but that does not include labor. Section 119.011(1), F.S. A special service charge is permitted in addition to the actual cost if the nature or volume of the records requested requires extensive use of information technology resources or extensive clerical or supervisory assistance.

¹⁶ Section 119.084(2)(a), F.S.

¹⁷ Section 119.15, F.S.

¹⁸ The following state agencies responded to the questionnaire: Agriculture & Consumer Services; Legal Affairs; State Board of Administration; of Business and Professional Regulation; of Children and Families Services; of Education; Elderly Affairs; Environmental Protection; Financial Services; Fish & Wildlife Conservation Commission; Health; Highway Safety and Motor Vehicles; Juvenile Justice; Law Enforcement; Lottery; Management Services; Revenue; State; Workforce Innovation; Florida Parole Commission.

¹⁹ The Department of Juvenile Justice indicated that it had obtained one copyright.

²⁰ FDLE responded that it had obtained two copyrights.

²¹ FDLE indicated that it sold or licensed one sale of copyrighted software for \$75,000.

²² Of the 67 counties, the following responded to the questionnaire: Dixie; Franklin; Hernando; Lake; Levy; Manatee; Marion; Osceola; Pinellas; Putnam; Sarasota. This is a response rate of 16.4 percent.

processing software. For this small group, substantial sums have been obtained and the agencies within this group have recommended retention of the authority. Further, one respondent noted that the ability of an agency to obtain a copyright might provide that agency with some advantage when negotiating with a vendor for the production of a software package for that entity. Thus, there are some practical benefits from this authority.

Effect of Bill

The bill removes the repeal date thereby retaining agency authority to copyright and sell data processing software. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 119.084, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As most agencies do not produce or market software, the bill should result in minimal or no fiscal impact on the private sector.

D. FISCAL COMMENTS:

For most state and local governments, the bill will have limited fiscal impact because most did not report that they produce and market their software. In the few instances where state and local governments do produce and sell their software, the bill should have a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding copyright of data processing software; amending s. 119.084, F.S.; making editorial changes; deleting the provision that provides for the repeal of the exemption under the Open Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.084, Florida Statutes, is amended to read:

119.084 Copyright of data processing software created by governmental agencies; sale price and licensing fee.--

(1) As used in this section, "agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An ~~Any~~ agency is authorized to acquire and hold a ~~copyright~~ ~~copyrights~~ for data processing software created by the agency and to enforce its rights pertaining to such ~~copyright~~ ~~copyrights~~, provided that the agency complies with the requirements of this ~~subsection~~ section.

(a) An ~~Any~~ agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency ~~and~~ may establish a price for the sale and a licensing ~~license~~ fee for the use of such data processing software that. ~~Proceeds from the sale or licensing of~~

BILL

ORIGINAL

YEAR

~~copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used. The price for the sale of and the fee for the licensing of copyrighted data processing software may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).~~

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

~~(3) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS - Revised

BILL #: PCB GO 06-07 OGSR Communications Services Tax Simplification Law
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature enacted the "Communications Services Tax Simplification Law."¹ The act combined seven different state and local taxes and fees and replaced those revenues with a two-tiered tax composed of a state tax and a local option tax on communications services. The new tax structure took effect October 1, 2001.

In 2001, the Legislature created a public records exemption for information received by the Department of Revenue pursuant to the Communications Services Tax Simplification Law. All information contained in returns, reports, accounts, and declarations received by the department, in addition to investigative reports and information and letters of technical advice, are exempt from public records requirements. The exemption authorizes release of the information for limited purposes. Any person who willfully and knowingly releases the exempt information for purposes not authorized by law commits a misdemeanor of the first degree.² Pursuant to the Open Government Sunset Review Act,³ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes and removes superfluous language. The bill removes duplicative provisions found throughout the exemption and places them in one subsection. For example, the bill removes duplicative criminal penalties found in numerous subsections and creates a stand-alone subsection for the criminal penalty.

C. SECTION DIRECTORY:

Section 1 amends s. 213.053, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the

¹ Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.

² A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed \$1,000 (s. 775.083(1)(d), F.S.).

³ Section 119.15, F.S.

year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill eliminates the repeal, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding the Communications Services
Tax Simplification Law; amending s. 213.053, F.S.; making
editorial changes; removing superfluous provisions;
deleting the provision that provides for the repeal of the
exemption under the Open Government Sunset Review Act;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 213.053, Florida Statutes, is amended to
read:

213.053 Confidentiality and information sharing.--
(1) ~~(a) The provisions of This section applies apply to:~~
(a) Section s. 125.0104, county government;
(b) Section s. 125.0108, tourist impact tax;
(c) Chapter 175, municipal firefighters' pension trust
funds;
(d) Chapter 185, municipal police officers' retirement
trust funds;
(e) Chapter 198, estate taxes;
(f) Chapter 199, intangible personal property taxes;
(g) Chapter 201, excise tax on documents;
(h) Chapter 202, the Communications Services Tax
Simplification Law;
(i) Chapter 203, gross receipts taxes;
(j) Chapter 211, tax on severance and production of
minerals;

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(k) Chapter 212, tax on sales, use, and other transactions;
 (l) Chapter 220, income tax code;
 (m) Chapter 221, emergency excise tax;
 (n) Section s. 252.372, emergency management, preparedness,
 and assistance surcharge;
 (o) Section s. 370.07(3), Apalachicola Bay oyster
 surcharge;
 (p) Chapter 376, pollutant spill prevention and control;
 (q) Section s. 403.718, waste tire fees;
 (q) Section s. 403.7185, lead-acid battery fees;
 (r) Section s. 538.09, registration of secondhand dealers;
 (s) Section s. 538.25, registration of secondary metals
 recyclers;
 (t) Sections ss. 624.501 and 624.509-624.515, insurance
 code;
 (u) Section s. 681.117, motor vehicle warranty enforcement;
 and
 (v) Section s. 896.102, reports of financial transactions
 in trade or business.
~~(b) The provisions of this section also apply to chapter~~
~~202, the Communications Services Tax Simplification Law. This~~
~~paragraph is subject to the Open Government Sunset Review Act of~~
~~1995 in accordance with s. 119.15, and shall stand repealed on~~
~~October 2, 2006, unless reviewed and saved from repeal through~~
~~reenactment by the Legislature.~~
 (2) ~~Except as provided in subsections (3), (4), (5), (6),~~
~~(7), (8), (9), (10), (11), (12), (13), (14), (15), (16), and~~
~~(17), All information contained in Returns, reports, accounts, or~~
declarations, or letters of technical advice received by the

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department are ~~, including investigative reports and information~~
~~and including letters of technical advice, is confidential except~~
~~for official purposes and is exempt from the provisions of s.~~
~~119.07(1), except as otherwise provided in this section. Any~~
~~officer or employee, or former officer or employee, of the~~
~~department who divulges any such information in any manner,~~
~~except for such official purposes, commits a misdemeanor of the~~
~~first degree, punishable as provided in s. 775.082 or s. 775.083.~~

(3) The department shall permit a taxpayer, his or her
 authorized representative, or the personal representative of an
 estate to inspect the taxpayer's return and may furnish him or
 her an abstract of such return. A taxpayer may authorize the
 department in writing to divulge specific information concerning
 the taxpayer's account.

(4) The department, while providing unemployment tax
 collection services under contract with the Agency for Workforce
 Innovation through an interagency agreement pursuant to s.
 443.1316, may release unemployment tax rate information to the
 agent of an employer, which agent provides payroll services for
 more than 500 employers, pursuant to the terms of a memorandum of
 understanding. The memorandum of understanding must state that
 the agent affirms, subject to the criminal penalties contained in
 ss. 443.171 and 443.1715, that the agent will retain the
 confidentiality of the information, that the agent has in effect
 a power of attorney from the employer which permits the agent to
 obtain unemployment tax rate information, and that the agent
 shall provide the department with a copy of the employer's power
 of attorney upon request.

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(5)~~(4)~~ Nothing contained in this section shall prevent the department from:

(a) Publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns; ~~or prevent the department from~~

(b) Disclosing to the Chief Financial Officer the names and addresses of those taxpayers who have claimed an exemption pursuant to s. 199.185(1)(i) or a deduction pursuant to s. 220.63(5).

(6)~~(5)~~ The department may make available to the Secretary of the Treasury of the United States or his or her delegate, the Commissioner of Internal Revenue of the United States or his or her delegate, the Secretary of the Department of the Interior of the United States or his or her delegate, or the proper officer of any state or his or her delegate, exclusively for official purposes, information to comply with any formal agreement for the mutual exchange of state information with the Internal Revenue Service of the United States, the Department of the Interior of the United States, or any state.

(7)~~(6)~~ Any information received by the Department of Revenue in connection with the administration of taxes, ~~including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax,~~ shall be made available ~~by the department~~ to:

(a) The Auditor General or his or her authorized agent;~~;~~

(b) The director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent;~~;~~

(c) The Chief Financial Officer or his or her authorized agent;~~;~~

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116 (d) The Director of the Office of Insurance Regulation of
117 the Financial Services Commission or his or her authorized
118 agent; ~~or~~

119 (e) A property appraiser or tax collector or their
120 authorized agents pursuant to s. 195.084(1); ~~in the performance~~
121 ~~of their official duties, or to~~

122 (f) Designated employees of the Department of Education
123 ~~solely~~ for determination of each school district's price level
124 index pursuant to s. 1011.62(2). ~~+~~

125

126 However, no information shall be disclosed ~~to the Auditor General~~
127 ~~or his or her authorized agent, the director of the Office of~~
128 ~~Program Policy Analysis and Government Accountability or his or~~
129 ~~her authorized agent, the Chief Financial Officer or his or her~~
130 ~~authorized agent, the Director of the Office of Insurance~~
131 ~~Regulation or his or her authorized agent, or to a property~~
132 ~~appraiser or tax collector or their authorized agents, or to~~
133 ~~designated employees of the Department of Education if such~~
134 ~~disclosure is prohibited by federal law. The Auditor General or~~
135 ~~his or her authorized agent, the director of the Office of~~
136 ~~Program Policy Analysis and Government Accountability or his or~~
137 ~~her authorized agent, the Chief Financial Officer or his or her~~
138 ~~authorized agent, the Director of the Office of Insurance~~
139 ~~Regulation or his or her authorized agent, and the property~~
140 ~~appraiser or tax collector and their authorized agents, or~~
141 ~~designated employees of the Department of Education shall be~~
142 ~~subject to the same requirements of confidentiality and the same~~
143 ~~penalties for violation of the requirements as the department.~~
144 For the purpose of this subsection, "designated employees of the

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Department of Education" means only those employees directly responsible for calculation of price level indices pursuant to s. 1011.62(2). It does not include the supervisors of such employees or any other employees or elected officials within the Department of Education.

(8)~~(7)~~ Notwithstanding any other provision of this section, the department may provide:

(a) Information relative to chapter 211, chapter 376, or chapter 377 to the proper state agency in the conduct of its official duties.

(b) Names, addresses, and dates of commencement of business activities of corporations to the Division of Corporations of the Department of State in the conduct of its official duties.

(c) Information relative to chapter 212 and chapters 561 through 568 to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation in the conduct of its official duties.

(d) Names, addresses, and sales tax registration information to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the conduct of its official duties.

(e) Names, addresses, taxpayer identification numbers, and outstanding tax liabilities to the Department of the Lottery and the Office of Financial Regulation of the Financial Services Commission in the conduct of their official duties.

(f) State tax information to the Nexus Program of the Multistate Tax Commission pursuant to any formal agreement for the exchange of mutual information between the department and the commission.

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174 (g) Tax information to principals, and their designees, of
175 the Revenue Estimating Conference for the purpose of developing
176 official revenue estimates.

177 (h) Names and addresses of persons paying taxes pursuant to
178 part IV of chapter 206 to the Department of Environmental
179 Protection in the conduct of its official duties.

180 (i) Information relative to chapters 212 and 326 to the
181 Division of Florida Land Sales, Condominiums, and Mobile Homes of
182 the Department of Business and Professional Regulation in the
183 conduct of its official duties.

184 (j) Information authorized pursuant to s. 213.0535 to
185 eligible participants and certified public accountants for such
186 participants in the Registration Information Sharing and Exchange
187 Program.

188 (k)1. Payment information relative to chapters 199, 201,
189 212, 220, 221, and 624 to the Office of Tourism, Trade, and
190 Economic Development, or its employees or agents that are
191 identified in writing by the office to the department, in the
192 administration of the tax refund program for qualified defense
193 contractors authorized by s. 288.1045 and the tax refund program
194 for qualified target industry businesses authorized by s.
195 288.106.

196 2. Information relative to tax credits taken by a business
197 under s. 220.191 and exemptions or tax refunds received by a
198 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
199 and Economic Development, or its employees or agents that are
200 identified in writing by the office to the department, in the
201 administration and evaluation of the capital investment tax
202 credit program authorized in s. 220.191 and the semiconductor,

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203 defense, and space tax exemption program authorized in s.
 204 212.08(5)(j).

205 (l) Information relative to chapter 212 and the Bill of
 206 Lading Program to the Office of Agriculture Law Enforcement of
 207 the Department of Agriculture and Consumer Services in the
 208 conduct of its official duties.

209 (m) Information relative to chapter 198 to the Agency for
 210 Health Care Administration in the conduct of its official
 211 business relating to ss. 409.901-409.9101.

212 (n) Information contained in returns, reports, accounts, or
 213 declarations to the Board of Accountancy in connection with a
 214 disciplinary proceeding conducted pursuant to chapter 473 when
 215 related to a certified public accountant participating in the
 216 certified audits project, or to the court in connection with a
 217 civil proceeding brought by the department relating to a claim
 218 for recovery of taxes due to negligence on the part of a
 219 certified public accountant participating in the certified audits
 220 project. In any judicial proceeding brought by the department,
 221 upon motion for protective order, the court shall limit
 222 disclosure of tax information when necessary to effectuate the
 223 purposes of this section.

224 (o) Information relative to ss. 376.70 and 376.75 to the
 225 Department of Environmental Protection in the conduct of its
 226 official business and to the facility owner, facility operator,
 227 and real property owners as defined in s. 376.301.

228 (p) Information relative to ss. 199.1055, 220.1845, and
 229 376.30781 to the Department of Environmental Protection in the
 230 conduct of its official business.

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231 (q) Names, addresses, and sales tax registration
232 information to the Division of Consumer Services of the
233 Department of Agriculture and Consumer Services in the conduct of
234 its official duties.

235 (r) Information relative to the returns required by ss.
236 175.111 and 185.09 to the Department of Management Services in
237 the conduct of its official duties. The Department of Management
238 Services is, in turn, authorized to disclose payment information
239 to a governmental agency or the agency's agent for purposes
240 related to budget preparation, auditing, revenue or financial
241 administration, or administration of chapters 175 and 185.

242 (s) Names, addresses, and federal employer identification
243 numbers, or similar identifiers, to the Department of Highway
244 Safety and Motor Vehicles for use in the conduct of its official
245 duties.

246 (t) Information relative to the tax exemptions under ss.
247 212.031, 212.06, and 212.08 for those persons qualified under s.
248 288.1258 to the Office of Film and Entertainment. The Department
249 of Revenue shall provide the Office of Film and Entertainment
250 with information in the aggregate.

251 (u) Information relative to s. 220.187 to the Department of
252 Education in the conduct of its official business.

253 (v) Information relative to chapter 202 to each local
254 government that imposes a tax pursuant to s. 202.19 in the
255 conduct of its official duties as specified in chapter 202.
256 Information provided under this paragraph may include, but is not
257 limited to, any reports required pursuant to s. 202.231, audit
258 files, notices of intent to audit, tax returns, and other
259 confidential tax information in the department's possession

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relating to chapter 202. A person or an entity designated by the local government in writing to the department as requiring access to confidential taxpayer information shall have reasonable access to information provided pursuant to this paragraph. Such person or entity may disclose such information to other persons or entities with direct responsibility for budget preparation, auditing, revenue or financial administration, or legal counsel. Such information shall only be used for purposes related to budget preparation, auditing, and revenue and financial administration. Any information furnished to a local government, or to any person or entity designated by the local government as authorized by this paragraph, ~~that is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution pursuant to this section shall continue to be exempt when so provided,~~ and may not be further disclosed except as provided by this paragraph.

(w) Tax registration information to the Agency for Workforce Innovation for use in the conduct of its official duties, ~~which information may not be redisclosed by the Agency for Workforce Innovation.~~

(x) Rental car surcharge revenues authorized by s. 212.0606, reported according to the county to which the surcharge was attributed to the Department of Transportation.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. ~~Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor~~

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289 ~~of the first degree, punishable as provided by s. 775.082 or s.~~
290 ~~775.083.~~

291 (9)~~(8)~~ The Department of Revenue shall provide returns,
292 reports, accounts, or declarations received by the department,
293 ~~including investigative reports and information, or information~~
294 ~~contained in such documents,~~ pursuant to an order of a judge of a
295 court of competent jurisdiction or pursuant to a subpoena duces
296 tecum only when the subpoena is:

297 (a) Issued by a state attorney, a United States attorney,
298 or a court in a criminal investigation or a criminal judicial
299 proceeding;

300 (b) Issued by a state or federal grand jury; or

301 (c) Issued by a state attorney, the Department of Legal
302 Affairs, the State Fire Marshal, a United States attorney, or a
303 court in the course of a civil investigation or a civil judicial
304 proceeding under the state or federal racketeer influenced and
305 corrupt organization act or under chapter 896.

306 (10)~~(9)~~ (a) ~~Notwithstanding other provisions of this~~
307 ~~section,~~ The department shall, subject to paragraph (c) and to
308 the safeguards and limitations of paragraphs (b) and (d),
309 disclose to the governing body of a municipality, a county, or a
310 subcounty district levying a local option tax, or any state tax
311 that which is distributed to units of local government based upon
312 place of collection, ~~which the department is responsible for~~
313 ~~administering,~~ names and addresses only of the taxpayers granted
314 a certificate of registration pursuant to s. 212.18(3) who reside
315 within or adjacent to the taxing boundaries of such municipality,
316 county, or subcounty district when sufficient information is
317 supplied by the municipality, the county, or subcounty district

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as the department by rule may prescribe, provided such governing bodies are following s. 212.18(3) relative to the denial of an occupational license after the department cancels a dealer's sales tax certificate of registration.

(b) Such information shall be disclosed only if the department receives an authenticated copy of a resolution adopted by the governing body requesting it.

~~(c) After receipt of such information, the governing body and its officers and employees are subject to the same requirements of confidentiality and the same penalties for violating confidentiality as the department and its employees.~~
The resolution requesting such information shall provide assurance that the governing body and its officers and employees are aware of the confidentiality ~~those~~ requirements and of the penalties for their violation of such requirements., ~~and~~ The resolution shall describe the measures that will be put into effect to ensure such confidentiality. The officer of the department who is authorized to receive, consider, and act upon such requests shall, if satisfied that the assurances in the resolution are adequate to assure confidentiality, grant the request.

~~(d) Nothing in this subsection authorizes disclosure of any information prohibited by federal law from being disclosed.~~

~~(11)(10)~~ Notwithstanding any other provision of this ~~section,~~ With respect to a request for verification of a certificate of registration issued pursuant to s. 212.18 to a specified dealer or taxpayer or with respect to a request by a law enforcement officer for verification of a certificate of registration issued pursuant to s. 538.09 to a specified

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347 secondhand dealer or pursuant to s. 538.25 to a specified
 348 secondary metals recycler, the department may disclose whether
 349 the specified person holds a valid certificate or whether a
 350 specified certificate number is valid or whether a specified
 351 certificate number has been canceled or is inactive or invalid
 352 and the name of the holder of the certificate. This subsection
 353 shall not be construed to create a duty to request verification
 354 of any certificate of registration.

355 (12)~~(11)~~ The department may provide to a United States
 356 Trustee, or his or her designee, for any United States Bankruptcy
 357 Court, exclusively for official purposes in connection with
 358 administering a bankruptcy estate, information relating to
 359 payment or nonpayment of taxes imposed by any revenue law of this
 360 state by a trustee, debtor, or debtor in possession, including
 361 any amount paid or due.

362 (13)~~(12)~~ The department may disclose certain state sales
 363 tax information relating to the cancellation or revocation of
 364 sales and use tax certificates of registration for the failure to
 365 collect and remit sales tax. This information is limited to the
 366 sales tax certificate number, trade name, owner's name, business
 367 location address, and the reason for the cancellation or
 368 revocation.

369 (14)~~(13)~~ Notwithstanding the provisions of s. 896.102(2),
 370 the department may allow full access to the information and
 371 documents required to be filed with it under s. 896.102(1) to
 372 federal, state, and local law enforcement and prosecutorial
 373 agencies, and to the Office of Financial Regulation of the
 374 Financial Services Commission, and any of those agencies may use

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375 the information and documents in any civil or criminal
376 investigation and in any court proceedings.

377 (15)~~(14)~~ (a) ~~Notwithstanding any other provision of this~~
378 ~~section,~~ The department shall, subject to the safeguards
379 specified in paragraph (c), disclose to the Division of
380 Corporations of the Department of State the name, address,
381 federal employer identification number, and duration of tax
382 filings with this state of all corporate or partnership entities
383 which are not on file or have a dissolved status with the
384 Division of Corporations and which have filed tax returns
385 pursuant to either chapter 199 or chapter 220.

386 (b) The Division of Corporations shall use such information
387 only in the pursuit of its official duties relative to
388 nonqualified foreign or dissolved corporations in the recovery of
389 fees and penalties due and owing the state.

390 ~~(c) All information exchanged between the Division of~~
391 ~~Corporations and the department shall be subject to the same~~
392 ~~requirements of confidentiality as the Department of Revenue.~~

393 (16)~~(15)~~ The department may disclose confidential taxpayer
394 information contained in returns, reports, accounts, or
395 declarations filed with the department by persons subject to any
396 state or local tax to the child support enforcement program, to
397 assist in the location of parents who owe or potentially owe a
398 duty of support, as defined in s. 409.2554, pursuant to Title IV-
399 D of the Social Security Act, their assets, their income, and
400 their employer, and to the Department of Children and Family
401 Services for the purpose of diligent search activities pursuant
402 to chapter 39. ~~Nothing in this subsection authorizes the~~
403 ~~disclosure of information if such disclosure is prohibited by~~

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404 ~~federal law. Employees of the child support enforcement program~~
 405 ~~and of the Department of Children and Family Services are bound~~
 406 ~~by the same requirements of confidentiality and the same~~
 407 ~~penalties for violation of the requirements as the department.~~

408 ~~(17)(16)~~ The department may provide to the person against
 409 whom transferee liability is being asserted pursuant to s.
 410 212.10(1) information relating to the basis of the claim.

411 ~~(18)(17)~~ The department may disclose to a person entitled
 412 to compensation pursuant to s. 213.30 the amount of any tax,
 413 penalty, or interest collected as a result of information
 414 furnished by such person.

415 (19) Any person who willfully and knowingly releases
 416 information made confidential and exempt pursuant to this section
 417 commits a misdemeanor of the first degree, punishable as provided
 418 in s. 775.082 or s. 775.083.

419 (20) Nothing in this section authorizes the disclosure of
 420 information if such disclosure is prohibited by federal law.

421 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-08 OGSR Archaeological Sites
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brazzell <i>HUB</i>	Williamson <i>Law</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for any information identifying the location of archaeological sites contained in site files and records maintained by the Division of Historical Resources of the Department of State when that division finds that disclosure of such information will create a substantial risk of harm, theft, or destruction at the sites. The exemption will repeal on October 2, 2006, if this bill does not become law.

This bill does not appear to have a fiscal impact on local governments. This bill may have a minimal non-recurring positive fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 267.061(1)(a), F.S., declares that

[T]he rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment . . .

One element of the state's system of preserving historic properties is the maintenance of the Florida Master Site File ("site file"). The site file contains information about nearly 28,000 Florida archaeological sites in various formats, including electronic and paper.¹ The site file also contains information about other non-archaeological historic properties. The site file fulfills federal requirements contained in the National Historic Preservation Act of 1966, as amended through 2000, codified in 16 U.S.C. 470a(b)(3)(a) to "conduct a comprehensive survey of historic properties and maintain inventories of such properties". Various parties utilize the information in the site file, including local government staff, consultants charged with preserving archeological and other historic sites, and researchers.

There have been recent incidents involving looting of archaeological sites on state land:²

- In May 2004, Department of Environmental Protection agents arrested two individuals who were digging at Newnan's Lake, a site that has evidence of an archaic American Indian occupation. According to the division, the digging heavily damaged the site. Sites in the area are known as "Newnan's Points," artifacts that can fetch high prices on the Internet and at artifact shows. The damage assessment totaled archaeological value and the cost of the assessment and repair at \$8,960.56.
- Two individuals were arrested in May 2004 for unauthorized excavation and for removing arrowheads and tools at Enclave B on Southwest Florida Water Management District lands in Pasco County. The estimated cost of site damage was \$37,249.82.
- Department of Environmental Protection officers arrested one individual in June 2005 for removing artifacts from sites in the Tomoka State Park in Volusia County.
- Fish and Wildlife Conservation Commission officers arrested two individuals for digging at a site in the Lochloosa Wildlife Conservation Area in March 2005. Based on information from these individuals, a subsequent review of other sites found widespread vandalism.

Current law provides a public records exemption for information identifying the location of an archaeological site contained in site files or other records maintained by the Division of Historical Resources of the Department of State if the division finds that disclosure of such information will create

¹ Section 267.031(5)(n), F.S., names and establishes the site file.

² Section 267.13, F.S., prohibits certain actions, including removing or otherwise altering any archeological site, upon any land owned or controlled by the state or within the boundaries of a designated state archeological landmark or landmark zone. The section of statute also provides for penalties ranging from misdemeanor to felony and administrative fines as well as forfeiture of any materials removed.

a substantial risk of harm, theft, or destruction at such site. Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 1, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 267.135, F.S., to remove the repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill eliminates the repeal, state governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act³ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

³ Section 119.15, F.S.

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act regarding archaeological sites; amending
s. 267.135, F.S.; making editorial changes; deleting the
provision that provides for the repeal of the exemption
under the Open Government Sunset Review Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 267.135, Florida Statutes, is amended to
read:

267.135 Location of archaeological sites.--Any information
identifying the location of an archaeological site held sites
~~contained in site files or other records maintained~~ by the
Division of Historical Resources of the Department of State is
exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a) of Art. I
of the State Constitution, if the Division of Historical
Resources finds that disclosure of such information will create a
substantial risk of harm, theft, or destruction at such site
~~sites. This section is subject to the Open Government Sunset~~
~~Review Act in accordance with s. 119.15 and expires on October 2,~~
~~2006, unless reviewed and reenacted by the Legislature.~~

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-09 OGSR Economic Development Agencies
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for certain business information held by an economic development agency. Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt from public records requirements for a limited period of time. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a public records exemption for certain business information held by an economic development agency.¹ Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt² from public records requirements for a limited period of time. The information remains confidential and exempt:

- For 24 months after the date an economic development agency receives a request for confidentiality;
- Until disclosed by the business requesting confidentiality; or
- Until the information is otherwise disclosed, whichever occurs first.³

Pursuant to the Open Government Sunset Review Act,⁴ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes, reorganizes the exemption, and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

¹ "Economic development agency" means the Office of Tourism, Trade, and Economic Development; an industrial development authority; the Florida Space Authority; the Florida Aerospace Finance Corporation; a local government economic development agency; a research and development authority; or a private entity authorized by the state or a local government to promote the business interests of the state or that local government. Section 288.075(1), F.S.

² There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

³ Section 288.075(2), F.S.

⁴ Section 119.15, F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill eliminates the repeal, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding economic development agencies;
4 amending s. 288.075, F.S.; making editorial changes;
5 deleting the provision that provides for the repeal of the
6 exemption under the Open Government Sunset Review Act;
7 providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 288.075, Florida Statutes, is amended to
12 read:
13 288.075 Confidentiality of records.--
14 (1) As used in this section, the term "economic development
15 agency" means:
16 (a) The Office of Tourism, Trade, and Economic
17 Development;;
18 (b) Any industrial development authority created in
19 accordance with part III of chapter 159 or by special law;;
20 (c) The Florida Space Authority created in part II of
21 chapter 331;;
22 (d) The Florida Aerospace Finance Corporation created in
23 part III of chapter 331;;
24 (e) The public economic development agency of a county or
25 municipality;;~~or~~
26 (f) Any research and development authority created in
27 accordance with part V of chapter 159;; ~~The term also includes~~
28 (g) Any private agency, person, partnership, corporation,
29 or business entity when authorized by the state, a municipality,

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or a county to promote the general business interests or industrial interests of the state or that municipality or county.

(2) Upon written request from a private corporation, partnership, or person, ~~records of an economic development agency which contain or would provide~~ information concerning plans, intentions, or interests of that ~~such~~ private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state, held by an economic development agency, is ~~are~~ confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 24 months after the date an economic development agency receives a request for confidentiality or ~~until disclosed by an economic development agency pursuant to subsection (4) or by the party requesting confidentiality under this section. Confidentiality must be maintained until the expiration of the 24-month period or until documents or information is~~ are otherwise disclosed, whichever occurs first. ~~Any confidentiality provided under this section does not apply when any party petitions a court of competent jurisdiction and, in the opinion of the court, proves need for access to such documents. This exemption expires October 2, 2006, and is subject to review by the Legislature under the Open Government Sunset Review Act of 1995 in accordance with s. 119.15.~~

(3) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that the private corporation,

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partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. A request to extend the period of confidentiality must be received prior to the expiration of confidentiality provided in subsection (2). ~~This section does not waive any provision of chapter 120 or any other provision of law requiring a public hearing.~~

(4) Trade secrets as defined in s. 812.081 relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section, held by an economic development agency, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first.

(5) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information pursuant to this section, until 90 days after such information is made public, unless such public officer or employee is acting in an official capacity, the agreement does not accrue to the personal benefit of such public officer or employee, and, in the professional judgment of such officer or employee, the agreement is necessary to effectuate an economic development project.

~~(5) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation,~~

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~~partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under this section.~~

~~(6) Notwithstanding the period of confidentiality specified in subsection (2), trade secrets, as defined by s. 812.081, contained in the records of an economic development agency relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first. The 10-year period of confidentiality provided by this subsection does not apply to any portion of the records other than trade secrets as defined by s. 812.081.~~

~~(7) Any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. This act shall take effect October 1, 2006.